

**BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2017-32-E**

**IN RE:**

3109 Hwy. 25 S. L.L.C. d/b/a 25 Drive-In and	)	
Tommy McCutcheon,	)	
	)	
Complainant/Petitioner,	)	
	)	
v.	)	
	)	
Duke Energy Carolinas, LLC	)	
	)	
Defendant/Respondent.	)	
	)	

---

Response to Petition for Rehearing  
or Reconsideration

Pursuant to 10 S.C. Code Ann. Regs. 103-829(A), Petitioner 3109 Hwy. 25 S. L.L.C. hereby responds to the Petition for Reconsideration filed by Respondent Duke Energy Carolinas, LLC (“DEC”) on January 2, 2018. The Commission should deny Respondent’s Petition and allow its decision in Order No. 2017-774 to stand. Petitioner DEC is incorrect in the following respects:

1. Throughout DEC’s petition it improperly characterizes the holding in *Payne v. Duke Power Co.*, 304 S.C. 447, 405 S.E.2d 399 (1991) by equating an “upgrade” with a “new connection.” The holding in *Payne* simply states that a “new connection” exists when there has been a change in the “character” of the connection or the use of the premises. The Commission has simply made a fact-specific finding that it would be unreasonable to give Petitioner access at the Greenwood rate to capacity “significantly greater than that which it would have access to under the original facilities serving the premises.” Order No. 2017-774 at page 5.
2. The Commission did not make a determination on the cause of the failures at the theater. In its Order, it held that the fuse on the transformer had melted, which was indicative of excess current flow, which would result in a thermal overload. Order No. 2017-774 at page 3. However, the Commission took pains to note that on June 13, 2015, DEC’s equipment only measured “...the amount of energy that had been used in kilowatt-hours, which is not necessarily indicative of peak load... The load information, though, was not available at the time of the outages.” Order No. 2017-774 at page 4. “Indicative” is not the same as

determinative, and the Commission did not make a determination as to the ultimate cause of the outages. Furthermore, the Commission noted the load information and the calculation of amperes drawn was based on readings taken from new metering equipment installed by DEC after the outages.

3. Respondent improperly states that there is no substantial evidence on the record that the cause of the outages was anything other than excessive load. During the hearing, Jesse Gonzalez testified that after he repaired the first outage, he might have replaced the 2/0 cable with a thinner 1/0 cable as 2/0 cable is no longer available. Gonzalez Testimony, Tr. p. 183. To the extent that DEC repaired the cable with a thinner cable only capable of carrying a continuous load of 150 amperes (Lunsford Testimony Tr. p. 274), this is evidence that the actions of DEC contributed to the second outage. As stated above, the Commission did not make factual determinations on the cause or causes of the outages.
4. Respondent incorrectly states that in the Order the Commission had found Petitioner no longer “qualified” for the Greenwood Rate, and so could not be “returned” to the Rate. At no point did the Commission make a factual finding that Petitioner had ever been “disqualified” for the Greenwood Rate. As a result, Respondent’s citation to the “just and reasonable” rate provisions of S.C. Code Ann. §58-27-810 is inapposite. The Commission made an individualized and very fact-specific holding that under the circumstances, Petitioner should continue to have access to the Greenwood Rate, subject to the reasonable restriction that Petitioner may only have access to the Rate as long as the theater stays within the original limitations of the equipment that was installed to serve the premises.

For the reasons stated above, the Petition should be denied.

Respectfully submitted this 5<sup>th</sup> day of January, 2018.



Alexander G. Shissias  
John J. Fantry, Jr.  
The Shissias Law Firm, LLC  
1727 Hampton Street  
Columbia, SC 29201  
803-540-3090